

REMARKS

Applicants believe that the present application is condition for allowance at the time of the next Official Action.

Claims 14-32 are pending in the application. Claims 14-32 have been amended to address the formal matters raised in the outstanding Official Action.

Claims 14-32 were rejected under 35 USC § 102(e) as allegedly being anticipated by KIMURA et al. This rejection is traversed.

The present application claims priority to Japanese Application No. 2002-182418, filed on June 24, 2002. Pursuant to MPEP § 201.15, applicants submit a verified translation of Japanese Application No. 2002-182418 with the present amendment. As KIMURA was published after June 24, 2002, KIMURA fails to qualify as prior art.

Thus, applicants ask that the rejection be withdrawn.

Claims 14-32 were rejected under 35 USC § 103(a) as allegedly being obvious in view of BERTE or CHISSO in view of BRADY or GALLI. This rejection is traversed.

The claimed invention is directed to a flame-retardant resin composition comprising components (A), (B), (C) and (D). The claimed combination of these components exhibits the following unexpected effects:

i) secondary agglomeration at the time that each flame-retardant component is mixed and grinded can be prevented;

ii) excellent storage stability; and

iii) when mixed with a synthetic resin, a synthetic resin composition that is capable of producing a molded article having excellent retardancy and no agglomeration can be obtained.

The claimed invention stands in contrast to the teachings of BERTE, CHISSO, BRADY AND GALLI. While BERTE, CHISSO, BRADY and GALLI may individually disclose one or some of these components (A), (B), (C) and (D), none of these cited references disclose or suggest a flame retardant composition containing all of the components.

Applicants also note that while the Official Action states that "Chisso Corp. recites metallic oxides and metal stearates in paragraph 0018", these additives (e.g., metallic oxides and metal stearates) described at paragraph 0018 are components added to a thermoplastic resin composition, and not a flame retardant composition. Thus, CHISSO can not be relied for such a teaching as suggested by the Official Action.

Furthermore, as the Examiner is aware, the Patent Office must consider evidence of nonobviousness whenever

presented. Specifically, the Patent Office is bound to consider evidence of unexpected results, commercial success, long-felt but unresolved needs, failure of others, skepticism of experts. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 1538 (Fed Cir. 1983). Indeed, federal Circuit precedent mandates consideration of comparative data in the specification which is intended to illustrate the claimed invention in reaching a conclusion with a regard to the obviousness of the claims. *In re Margolis*, 785 F.2d 1029 (Fed. Cir. 1986). It is apparent that the claimed invention exhibits unexpected results in light of the remarks that follow.

As can be taken from Table 3 of the present specification, the flame retardant composition of Comparative Examples 1-4, which did not contain components (C) or (D), exhibited severe agglomeration. The flame retardant composition of Comparative Example 1-1, in which component (D) was not contained, was initially free from agglomeration but the preventive effect of agglomeration deteriorated after one-week storage.

As can be seen in Table 5, a molded article produced by using any one of the resin compositions of Comparative Examples 2-1 to 2-6, which contained the flame retardant compositions lacking either component (C) or (D), underwent agglomeration. Indeed, even the thermoplastic resin composition of Chisso Corp, during the preparation of which a

retardant composition comprising components (A) and (B), and oxides and metal stearates are added to and mixed with a resin, cannot prevent the occurrence of agglomeration in a molded article. This is because agglomeration already occurred in the flame retardant composition comprising components (A) and (B). Thus, it is believed to be apparent that the claimed invention exhibits unexpected results.

The Supreme Court recently addressed the issue of obviousness in *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 167 L.Ed.2d 705 (2007). While the *KSR* Court rejected a rigid application of the teaching, suggestion, or motivation ("TSM") test in an obviousness inquiry, the Court acknowledged the importance of identifying "a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does" in an obviousness determination. *KSR*, 127 S.Ct. at 1731.

Moreover, the Court indicated that there is "no necessary inconsistency between the idea underlying the TSM test and the *Graham* analysis." *Id.* As long as the test is not applied as a "rigid and mandatory" formula, that test can provide "helpful insight" to an obviousness inquiry. *Id.*

In view of the above, applicants submit that one skilled in the art would have lacked a reason to modify the publications to obtain the claimed invention, especially with the unexpected results as reported in the present specification.

Claims 14-19 were rejected under 35 USC § 112, second paragraph for allegedly being indefinite. This rejection has been traversed.

The claims have been amended to delete the term "higher". Thus, applicants ask that this rejection be withdrawn.

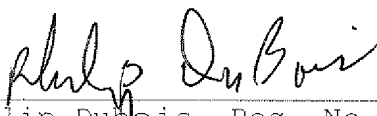
In view of the above, applicants believe that the present application is condition for allowance at the time of the next Official Action.

Should there be any matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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APPENDIX:

The Appendix includes the following item(s):

☒ - Verified Translation of Japanese Patent Application No.

2002-182418